

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:04-CR-52

v.

HON. ROBERT HOLMES BELL

ROBERT TARPLEY,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Robert Tarpley has filed a motion for modification or reduction of sentence (ECF No. 255) pursuant to 18 U.S.C. § 3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

However, because the defendant's original sentence was below the amended guideline range, the Probation Office has now found Defendant ineligible for a reduction in sentence under Guideline Amendment 782. Defense counsel has filed a response to the report of eligibility (ECF No. 277) and wishes to preserve the issue for future consideration should the law change. The government has

filed a response (ECF No. 278) concurring with the sentence modification report that Defendant is not eligible for a reduction.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 255) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

Dated: September 21, 2015

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

UNITED STATES DISTRICT JUDGE